

## 7. REGULATORY COMPLIANCE AND PERMIT REQUIREMENTS

This section lists federal, state, and local regulatory compliance and permit requirements for the proposed project.

Under Section 7 of the Endangered Species Act of 1973 (Public Law 93-205, as amended), DOE must consult with the U.S. Fish and Wildlife Service to ensure that proposed actions are not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of the critical habitat of such species (Appendix A).

Under Section 106 of the National Historic Preservation Act (Public Law 89-665, as amended), DOE must consult with New York's State Historic Preservation Officer to ensure compliance with the act (Appendix B).

### 7.1 FEDERAL REQUIREMENTS

#### CLEAN AIR ACT (CAA)

- Enacted by Public Law 90-148, Air Quality Act of 1967 (42 USC 7401 et seq.)
- Amended by Public Law 101-549, Clean Air Act Amendments of 1990
- Comprised of Titles I through VI
- Applicable titles
  - Title I—Air Pollution Prevention and Control. This Title is the basis for air quality and emission limitations, PSD permitting program, State Implementation Plans, New Source Performance Standards, and National Emissions Standards for Hazardous Air Pollutants. The PSD permitting program serves as the basis for PSD Construction Permits which are required by this Title of the Act.
  - Title IV—Acid Deposition Control. This Title establishes limitations on sulfur dioxide and nitrogen oxide emissions, permitting requirements, monitoring programs, reporting and record keeping requirements, and compliance plans for emission sources. This Title requires that emissions of sulfur dioxide from utility sources be limited to the amounts of allowances held by the sources.
  - Title V—Permitting. This Title provides the basis for the Operating Permit Program and establishes permit conditions, including monitoring and analysis, inspections, certification, and reporting.
- Regulations implementing the CAA are found in 40 CFR Parts 50–95.

#### FEDERAL WATER POLLUTION CONTROL ACT

- Enacted by Public Law 92-500 (33 USC 1251 et seq.)
- Amended by Public Law 95-217, Clean Water Act of 1977 (CWA) and Public Law 100-4, Water Quality Act of 1987
- Comprised of Titles I through IV
- Applicable titles
  - Title III—Standards and Enforcement

Section 316—Thermal Discharges. Section 316 (a) addresses the permitting of thermal discharges that can allow alternative thermal effluent limitations that are less stringent than the limitations under Section 402(a) of the CWA. This section states that, if an owner of a discharge subject to Section 301 (Effluent Limitations) or Section 306 (National Standards of Performance) can demonstrate that an effluent limitation is “. . . more stringent than necessary to assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge is to be made. . .”, then another effluent limitation may be imposed “. . .with respect to the thermal component of such discharge. . .”

Section 316 (b) addresses the permitting of water intake structures and requires that “Any standard established pursuant to Section 301 or Section 306 of this Act and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect best technology available for minimizing adverse environmental impact.”

—Title IV—Permits and Licenses

Section 402, National Pollutant Discharge Elimination System (NPDES). This section regulates the discharge of pollutants to surface waters. Regulations implementing the NPDES program are found in 40 CFR Part 122.

Section 404, Permits for Dredged or Fill Material. This section regulates the discharge of dredged or fill material in the jurisdictional wetlands and waters of the United States. The COE has been delegated the responsibility for authorizing these actions.

- Regulations implementing the CWA are found in 40 CFR Parts 104–140. Regulations which affect the permitting of this project include
  - 40 CFR Part 112—Oil Pollution Prevention. This regulation requires the preparation of a Spill Prevention, Control, and Countermeasure Plan.
  - 40 CFR Part 122—NPDES. This regulation requires the permitting and monitoring of any discharges to waters of the United States.

## **EXECUTIVE ORDERS 11988 AND 11990**

Executive Order 11988, Floodplain Management, directs federal agencies to establish procedures to ensure that they consider potential effects of flood hazards and floodplain management for any action undertaken. Agencies are to avoid impacts to floodplains to the extent practical. Executive Order 11990, Protection of Wetlands, requires federal agencies to avoid short- and long-term impacts to wetlands if a practical alternative exists. DOE regulation 10 CFR Part 1022 establishes procedures for compliance with these Executive Orders. Where no practical alternatives exist to development in floodplain and wetlands, DOE is required to prepare a floodplain and wetlands assessment discussing the effects on the floodplain and wetlands, and consideration of alternatives. In addition, these regulations require DOE to design or modify its actions to minimize potential damage in floodplains or harm to wetlands. DOE is also required to provide opportunity for public review of any plans or proposals for actions in floodplains (and new construction in wetlands).

The floodplain and wetlands effects anticipated from this proposed project are provided in the following sections of the EA: Section 3.5.1 (Floodplains—Existing Environment), Section 3.5.2 (Wetlands—Existing Environment), Section 4.1.5.1 (Floodplains—Environmental Consequences), and Section 4.1.5.2 (Wetlands—Environmental Consequences).

#### **RESOURCE CONSERVATION AND RECOVERY ACT OF 1976**

- Enacted by Public Law 94-580 (42 USC 6901 et seq.)
- Amended by Public Law 98-616, Hazardous and Solid Waste Amendments of 1984 and Public Law 99-499, Superfund Amendments and Reauthorization Act of 1986
- Applicable title
  - Title II—Solid Waste Disposal (known as the Solid Waste Disposal Act) regulates the disposal of solid wastes. Under Title II, Subtitle D—State or Regional Solid Waste Plans, allows each state to develop a comprehensive plan for managing and permitting the disposal of solid wastes.
- Project participants would be required to identify any residues that require management as hazardous waste under RCRA (40 CFR Part 261). For some waste streams, this includes testing waste samples using the TCLP or other procedures that measure hazardous waste characteristics.

#### **ENDANGERED SPECIES ACT OF 1973**

- Enacted by Public Law 93-205 (16 USC 1531 et seq.)
  - Section 7, “Interagency Cooperation,” requires any federal agency authorizing, funding, or carrying out any action to ensure that the action is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of critical habitat of such species. Consequently, the U.S. Fish and Wildlife Service will conduct a consultation, in compliance with Subsection (a)(2) of Section 7 of the Act, with regard to the impacts of the proposed project on threatened and endangered species listed by the Service and any critical habitat of such species in the vicinity of the project.

#### **OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION**

- OSHA General Industry Standards (29 CFR Part 1910)
- Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor’s Order Numbers 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), or 6-96 (62 FR 111), as applicable.
- OSHA Construction Industry Standards (29 CFR Part 1926)
- Authority: 44 FR 8577, Feb. 9, 1979; 44 FR 20940, Apr. 6, 1979

## **7.2 STATE REQUIREMENTS**

- Title V Facility Permit and Modified Title IV Facility Permit 8-5736-00004/00013 and 8-5736-00004/00014, New York State Department of Environmental Conservation

- State Pollutant Discharge Elimination System Permit 8-5736-00004/00001, New York State Department of Environmental Conservation
- Facilities used for disposal of solid waste must be licensed by the New York State Department of Environmental Conservation. Construction and operation of these facilities must conform with requirements established as a condition of licensing. Disposal of fly ash would be in Lockwood Landfill.